

**FEDERAL COMMUNICATIONS COMMISSION**  
**445 TWELFTH STREET, SW**  
**WASHINGTON, DC 20554**

MAY 19 2010

MEDIA BUREAU  
AUDIO DIVISION  
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Tango Radio, LLC  
c/o Antonio Falcon, MD  
2795 Pharmacy Road  
Rio Grande, TX 78582-6201

In re: KANM(FM), Skyline-Ganipa, NM  
Facility ID No.: 164213  
Tango Radio, LLC ("Tango")  
BLH-20100412AAD

Dear Applicant:

This letter refers to the above-captioned application for an FM Broadcast License to cover construction permit BMPH-20100330ADB (the "CP") filed by Tango for KANM, Skyline-Ganipa, NM. For the reasons discussed below, we are returning the application as unacceptable for filing.

An engineering study of the application reveals that Tango did not submit the required directional antenna proof of performance, antenna installation certifications, and radiofrequency electromagnetic field strength measurements required by the Special Operating Conditions specified in construction permit BMPH-20100330ADB. Tango acknowledges these omissions in the application and states that the documents are being prepared and will be submitted shortly. Tango also indicates that the station's main studio has not been established and requests a temporary waiver of the main studio requirements.

Section 73.3598 of the Commission's Rules<sup>1</sup> requires that construction of the KANM facilities authorized by the CP be completed and a license application filed by the expiration date of the CP, April 10, 2010. Tango, by its own admission in the Application, did not complete construction of the authorized KANM facilities by the CP expiration date. Submission of an incomplete license application prevents the staff from determining if an applicant has met its construction and testing responsibilities. Without the required proof of performance for the KANM directional antenna and the certifications that the antenna was installed in accordance with the manufacturer's instructions and properly oriented to achieve the authorized directional pattern, the staff cannot evaluate if the constructed KANM facilities comply with the CP. Without the required radiofrequency radiation ("RFR") measurements, the staff cannot determine if the constructed KANM facilities result in human exposure to excessive levels of RFR. Section 73.3564(a)(1) of the Commission's Rules<sup>2</sup> states that "...Applications that are not substantially

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<sup>1</sup> 47 C.F.R. § 73.3598.

<sup>2</sup> 47 C.F.R. § 73.3564(a)(1).

complete will not be considered and will be returned to the applicant. This rule makes clear that an applicant may not – as attempted by Tango in this case – “file a grossly defective and incomplete application as a mere placeholder and shift to the staff the full burden of ensuring the technical integrity and safety of allegedly constructed facilities.”<sup>3</sup> Tango filed a seriously deficient application, omitting all data necessary for evaluating the operation of the constructed KANM facilities. The filing of such a patently defective license application does not constitute the timely completion of station construction in accordance with the conditions set forth in the construction permit. To permit such filings would undermine the Commission’s strict construction permit requirements. Accordingly, we find that KANM’s construction permit BMPH-20100330ADB has automatically expired.<sup>4</sup>

Section 73.1620(a) of the Commission’s Rules<sup>5</sup> specifically states that program tests may be conducted upon completion of construction of an AM, FM, TV or Class A TV station in accordance with the terms of the construction permit, the technical provisions of the application, the rules and regulations and the applicable engineering standards. Since Tango did not complete the construction of the authorized facilities according to the terms of the CP, it is not eligible for program tests.

For the reasons set forth above, IT IS ORDERED, that Tango’s Application for License, BLH-20100412AAD, IS RETURNED as unacceptable for filing pursuant to Section 73.3564(a)(1) of the Commission’s Rules,<sup>6</sup> and Tango’s request for waiver of the main studio requirements of Section 73.1125 of the Commission’s Rules<sup>7</sup> IS DENIED. Construction Permit BMPH-20100330ADB for Station KANM, Skyline-Ganipa, NM, EXPIRED BY OPERATION OF LAW on April 10, 2010, without further action by the Commission.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rodolfo F. Bonacci", with a stylized flourish at the end.

Rodolfo F. Bonacci  
Assistant Chief  
Audio Division  
Media Bureau

cc: Roger Mills

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<sup>3</sup> *Aerco Broadcasting Corporation*, Memorandum Opinion and Order, 18 FCC Rcd 24417, 24419-20 (2003).

<sup>4</sup> *Wauchula Educational Broadcasting Corp.*, Letter, DA 09-237 (MB rel. Feb. 13, 2009) (dismissing license application and finding that construction permit had expired by operation of law based on failure to timely submit required AM station proof of performance).

<sup>5</sup> 47 C.F.R. § 73.1620(a).

<sup>6</sup> 47 C.F.R. § 73.1125.